

(v) Claims for damages caused by the fiscal operations of the Treasury or by regulation of the monetary system.

(w) Claims caused by the negligent or wrongful acts or omissions of ANG members acting within the scope of their employment, while performing duty under 32 U.S.C., on or after 29 December 1981.

(x) Claims caused by the negligent or wrongful acts or omissions of ANG technicians employed under 32 U.S.C. 709.

**§ 842.111 Applicable law.**

(a) *Extent of liability.* The following rules apply to determine the extent of liability of a claim.

(1) *Claims arising in the United States.* The law of the place where the act or omission occurs governs liability. The local law on dangerous instrumentalities, assumption of risk, *res ipsa loquitur*, last clear chance, discovered peril, and comparative and contributory negligence are considered. Absolute liability is never imposed.

(2) *Claims arising in foreign countries.* The general principles of tort law common to the majority of American jurisdictions as evidenced by Federal case law and standard legal publications, control liability, except that absolute liability is not imposed. However, the law of the place where the act or omission occurs governs the effect of the claimant's comparative or contributory negligence. Where applicable, rules of the road and similar locally prescribed standards of care are followed to determine fault.

NOTE: ANG personnel ordered to foreign countries proceed under title 10, U.S.C.; consequently, the National Guard Claims Act would not apply. However, there may be cases where ANG personnel are inadvertently in a foreign country while on title 32, U.S.C. orders.

(b) *Measure of damages.* The following rules apply to the measurement of damages.

(1) Normally, the law of the place where the act or omission occurs is applied. In claims arising in foreign countries, the measure of damages is determined in accordance with general principles of American tort law.

(2) Damages in suits against private persons are apportioned if local law applies comparative negligence.

(3) Proceeds from private insurance policies are not deducted except to the extent the policy was paid by the Government or is allowed by local law.

(4) Compensation and benefits from any U.S. Government associated source are deducted. However, sick and annual leave payments are deducted only if allowed by local law.

(5) The following are not payable:

(i) Punitive damages.

(ii) Cost of medical or hospital services furnished at U.S. expense.

(iii) Cost of burial expenses paid by the United States, any territory or possession, any state, or the District of Columbia.

(c) *Settlement by insurer or joint tortfeasor.* When settlement is made by an insurer or joint tortfeasor and an additional award is warranted, an award is made if:

(1) The United States is not protected by the release executed by the claimant.

(2) The total amount received from such source is first deducted.

**§ 842.112 Appeal of final denials.**

This paragraph explains the steps to take when a denial is appealed.

(a) A claimant may appeal the final denial of the claim. The claimant sends the request, in writing, to the initial settlement authority within a reasonable time following the final denial. Sixty days is considered a reasonable time, but the time limit may be waived for good cause.

(b) The initial settlement authority reviews the appeal.

(c) Where the settlement authority does not reach a final agreement with the claimant on an appealed claim, the entire claim file is sent to the next higher settlement authority, who is the appellate authority for that claim.

(d) The decision of the appellate authority is the final administrative action on the claim.

**§ 842.113 Government's right of subrogation, indemnity, and contribution.**

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of contribution and indemnity permitted by the law of the situs or

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under contract. Contribution or indemnity is not sought from ANG members whose conduct gave rise to Government liability.

### § 842.114 Attorney fees.

In the settlement of any claim pursuant to 32 U.S.C. 715 and this subpart, attorney fees will not exceed 20 percent of any award. For the purposes of this paragraph, an award is deemed to be the cost to the United States at the time of purchase of a structured settlement, and not its future value.

## Subpart N—Hospital Recovery Claims (42 U.S.C. 2651–2653)

### § 842.115 Scope of this subpart.

This subpart explains how the United States asserts and settles claims for costs of medical care, against third parties under the Federal Medical Care Recovery Act (FMCRA) and various other laws.

### § 842.116 Definitions.

This paragraph defines terms which are used within this subpart.

(a) *Base Staff Judge Advocate (SJA)*. The SJA of the base providing legal services to the Air Force medical facility which furnished initial medical care to the injured party is responsible for processing the hospital recovery claim. If an Air Force facility did not furnish the initial medical care, the SJA of the Air Force base within the claims jurisdiction of the initial treating facility is responsible for processing the claim.

(b) *Compromise*. A mutually binding agreement where payment is made and accepted in an amount less than the full amount of the claim.

(c) *Injured party*. The person who received medical care for injury or disease as a result of the incident on which the claim is based. The injured party may be represented by a guardian, personal representative, estate, or survivor.

(d) *Medical care*. Includes medical and dental treatment, prostheses, and medical appliances the US furnished or reimbursed other sources for providing.

(e) *Reasonable value of medical care*. Either:

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(1) An amount determined by reference to rates set by the Director of the Office of Management and Budget for the value of necessary medical care in US medical facilities.

(2) The actual cost of necessary care from other sources which was reimbursed by the United States.

(f) *Third party*. An individual, partnership, business, corporation (including insurance carriers), which is indebted to the United States for medical care provided to an injured party. (In some cases, a state or foreign government can be the third party.)

(g) *Waiver*. The voluntary relinquishment by the United States of the right to collect for medical care provided to an injured party.

### § 842.117 Delegations of authority.

(a) *Settlement authority*: (1) The following individuals have delegated authority to settle, compromise, or waive claims for \$40,000 or less and to accept full payment on any claim:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(2) The SJA of HQ 9AF for CENTCOM, and SJAs of PACAF and USAFE have delegated authority to compromise or waive claims for \$30,000 or less and to accept full payment on any claim.

(3) SJAs of single base GCMs, the SJAs of GMCs in PACAF and USAFE, and the SJAs of each Air Force base, station, or fixed installation have delegated authority to compromise or waive claims for \$15,000 or less and to accept full payment on any claim.

(b) *Authority to assert a claim*. Each settlement authority has authority to assert a claim in any amount for the reasonable value of medical care.

(c) *Redelegation of authority*. A settlement authority may redelegate to a subordinate judge advocate or civilian attorney, in writing, his or her authority to assert, compromise, or waive claims.

(d) *Authority to reduce, withdraw, and restore settlement authority*. Any superior settlement authority may reduce,